

RULE 114 APPENDIX
CODE OF ETHICS ENFORCEMENT PROCEDURE

Effective August 31, 2000

With amendments received through August 1, 2008

INTRODUCTION

Inclusion on the list of qualified neutrals pursuant to Minn. Gen. R. Prac. 114.12 is a conditional privilege, revocable for cause.

I. Scope

This procedure applies to complaints against any individual or organization (neutral) placed on the roster of qualified neutrals pursuant to Rule 114.12 or serving as a court appointed neutral pursuant to Minn. Gen. R. Prac. 114.05(b). Collaborative attorneys or other professionals as defined in Rule 111.05(a) are not subject to the Rule 114 Code of Ethics and Enforcement Procedure while acting in a collaborative process under that rule.

(Amended effective January 1, 2008.)

Advisory Comment

A qualified neutral is subject to this complaint procedure when providing any ADR services. The complaint procedure applies whether the services are court ordered or not, and whether the services are or are not pursuant to Minnesota General Rules of Practice. The Board will consider the full context of the alleged misconduct, including whether the neutral was subject to other applicable codes of ethics, or representing a "qualified organization" at the time of the alleged misconduct.

*Minn. Gen. R. Prac. 114.02(b): "**Neutral.** A 'neutral' is an individual or organization that provides an ADR process. A 'qualified neutral' is an individual or organization included on the State Court Administrator's roster as provided in Rule 114.12. An individual neutral must have completed the training and continuing education requirements provided in Rule 114.13. An individual neutral provided by an organization also must meet the training and continuing education requirements of Rule 114.13. Neutral fact-finders selected by the parties for their expertise need not undergo training nor be on the State Court Administrator's roster."*

Attorneys functioning as collaborative attorneys are subject to the Minnesota Rules on Lawyers Professional Responsibility. Complaints against collaborative attorneys should be directed to the Lawyers Professional Responsibility Board.

(Amended 2005.)

Advisory Committee Comment - 2007 Amendment

The committee believes it is worth reminding participants in collaborative law processes that the process is essentially adversary in nature, and collaborative attorneys owe the duty of loyalty to their clients. The Code of Ethics procedures apply to create standards of care for ADR neutrals, as defined in the rules; because collaborative lawyers, while acting in that capacity, are not neutrals, these enforcement procedures do not apply.

II. Procedure

A. A complaint must be in writing, signed by the complainant, and mailed or delivered to the ADR Review Board at 25 Rev. Dr. Martin Luther King Jr. Blvd., Suite 120, Saint Paul, MN 55155-1500. The complaint shall identify the neutral and make a short and plain statement of the conduct forming the basis of the complaint.

B. The State Court Administrator's Office, in conjunction with one ADR Review Board member shall review the complaint and recommend whether the allegation(s), if true, constitute a violation of the Code of Ethics, and whether to refer the complaint to mediation. The State Court Administrator's Office and ADR Review Board member may also request additional information from the complainant if it is necessary prior to making a recommendation.

C. If the allegation(s) of the complaint do not constitute a violation of the Code of Ethics, the complaint shall be dismissed and the complainant and the neutral shall be notified in writing.

D. If the allegation(s) of the complaint, if true, constitute a violation of the Code of Ethics, the Board will undertake such review, investigation, and action it deems appropriate. In all such cases, the Board shall send to the neutral, by certified mail, a copy of the complaint, a list identifying the ethical rules which may have been violated, and a request for a written response to the allegations and to any specific questions posed by the Board. It shall not be considered a violation of Rule 114.08(e) of the Minnesota General Rules of Practice or of Rule IV of the Code of Ethics, Rule 114 Appendix, for the neutral to disclose notes, records, or recollections of the ADR process complained of as part of the complaint procedure. Except for good cause shown, if the neutral fails to respond to the complaint in writing within thirty (30) days, the allegation(s) shall be deemed admitted.

E. The complainant and neutral may agree to mediation or the State Court Administrator's Office or Board may refer them to mediation conducted by a qualified neutral to resolve the issues raised by the complainant. Mediation shall proceed only if both the complainant and neutral consent. If the complaint is resolved through mediation, the complaint shall be dismissed, unless the resolution includes sanctions to be imposed by the Board. If no agreement is reached in mediation, the Board shall determine whether to proceed further.

F. After review and investigation, the Board shall advise the complainant and neutral of the Board's action in writing by certified mail sent to their respective last known addresses. If the neutral does not file a request for an appeal hearing as prescribed in section G, the Board's decision becomes final.

G. The neutral shall be entitled to appeal the proposed sanctions and findings of the Board to the ADR Ethics Panel by written request within fourteen days from receipt of the Board's action on the complaint. The Panel shall be appointed by the Judicial Council and shall be composed of two sitting or retired district court judges and one qualified neutral in good standing on the Rule 114 roster. Members of the Panel shall serve for a period to be determined by the Judicial Council. One member of the Panel shall be designated as the presiding member.

(1) **Discovery.** Within 30 days after receipt of a request for an appeal hearing, counsel for the Board and the neutral shall exchange the names and addresses of all persons known to have knowledge of the relevant facts. The presiding member of the Panel shall set a date for the exchange of the names and addresses of all witnesses the parties intend to call at the hearing. The Panel may issue subpoenas for the attendance of witnesses and production of documents or other evidentiary material. Counsel for the Board and the neutral shall exchange non-privileged evidence relevant to the alleged ethical violation(s), documents to be presented at the hearing, and witness statements and summaries of interviews with witnesses who will be called at the hearing. Both the Board and

the neutral have a continuing duty to supplement information required to be exchanged under this rule. All discovery must be completed within 10 days of the scheduled appeal hearing.

(2) **Procedure.** The neutral has the right to be represented by an attorney at all parts of the proceedings. In the hearing, all testimony shall be under oath. The Panel shall receive such evidence as the Panel deems necessary to understand and determine the issues. The Minnesota Rules of Evidence shall apply, however, relevancy shall be liberally construed in favor of admission. Counsel for the Board shall present the matter to the Panel. The Board has the burden of proving the facts justifying action by clear and convincing evidence. The neutral shall be permitted to adduce evidence and produce and cross-examine witnesses, subject to the Minnesota Rules of Evidence. Every formal hearing conducted under this rule shall be recorded electronically by staff for the Panel. The Panel shall deliberate upon the close of evidence and shall present written Findings and Memorandum with regard to any ethical violations and sanction resulting there from. The Panel shall serve and file the written decision on the Board, neutral and complainant within 45 days of the hearing. The decision of the Panel is final.

(Amended effective January 1, 2005; amended effective January 1, 2007; amended effective January 1, 2008.)

Advisory Comment

A complaint form is available from the ADR Review Board by calling 651-297-7590 or emailing adr@courts.state.mn.us.

The Board, at its discretion, may establish a complaint review panel comprised of members of the Board. Staff under the Board's direction and control may also conduct investigations.

Advisory Committee Comment - 2008 Amendment

Rule II.B. is amended in 2008 to implement a streamlined process so that one ADR Review Board member together with state court administration staff can make initial determinations. This will allow the process to proceed instead of waiting for monthly board meetings. Rule II.E. is amended to clarify that the parties may voluntarily elect mediation in addition to mediation being offered by the Board.

III. Sanctions

A. The Board may impose sanctions, including but not limited to:

- (1) Issue a private reprimand.
- (2) Designate the corrective action necessary for the neutral to remain on the roster.
- (3) Notify the appointing court and any professional licensing authority with which the neutral is affiliated of the complaint and its disposition.
- (4) Publish the neutral's name, a summary of the violation, and any sanctions imposed.
- (5) Remove the neutral from the roster of qualified neutrals, and set conditions for reinstatement if appropriate.

B. Sanctions shall only be imposed if supported by clear and convincing evidence. Conduct considered in previous or concurrent ethical complaints against the neutral is inadmissible, except to show a pattern of related conduct the cumulative effect of which constitutes an ethical violation.

C. Sanctions against an organization may be imposed for its ethical violation and its member's violation if the member is acting within the rules and directives of the organization.

(Amended effective January 1, 2005; amended effective January 1, 2007.)

IV. Confidentiality

A. Unless and until final sanctions are imposed, all files, records, and proceedings of the Board that relate to or arise out of any complaint shall be confidential, except:

- (1) As between Board members and staff;
- (2) Upon request of the neutral, the file maintained by the Board, excluding its work product, shall be provided to the neutral;
- (3) As otherwise required or permitted by rule or statute; and
- (4) To the extent that the neutral waives confidentiality.

B. If final sanctions are imposed against any neutral pursuant to Section III A (2) - (5), the sanction and the grounds for the sanction shall be of public record, and the Board file shall remain confidential.

C. Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Board or staff.

D. Accessibility to records maintained by district court administrators relating to complaints or sanctions about neutrals shall be consistent with this rule.

(Amended effective January 1, 2007; amended effective July 1, 2007; amended effective January 1, 2008.)

Advisory Committee Comment - 2008 Amendment

Rule IV.D. is amended in 2008 to clarify that accessibility to district court information about sanctions is consistent with Rule 114 for all neutrals. In addition to maintaining local rosters of parenting time expeditors, district courts receive notice of sanctions imposed by the ADR Review Board.

V. Privilege; immunity

A. **Privilege.** A statement made in these proceedings is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the statement.

B. **Immunity.** Board members and staff shall be immune from suit for any conduct in the course of their official duties.